

UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1625 South 900 West • PO Box 30408 • Salt Lake City, UT 84130-0408 • (801) 977-6800 • FAX (801) 977-6888
www.abc.utah.gov

“LIQUOR WAREHOUSE LICENSE”
APPLICATION CHECKLIST

The items below should be completed and submitted by the **10th of the month** or earlier, so that your application can be processed in a timely manner. All licensing requirements must be fully satisfied in order to complete your application. You will be notified of the next Utah Alcoholic Beverage Control Commission meeting when your application will be considered for issuance of a license.

- 1.____ Completed application form (enclosed).
- 2.____ Ownership entity organizational papers for business:
 - a) if a corporation, submit a copy of articles of incorporation;
 - b) if a partnership, submit a copy of written agreement;
 - c) if a limited liability company, submit a copy of articles of organization.
- 3.____ Criminal History background Check information (see application form).
- 4.____ Written consent from either city/town council or county commission whichever is applicable (form enclosed).
- 5.____ Copy of current local business license.
- 6.____ **\$10,000** Liquor Warehouse cash or corporate surety bond (form enclosed).
- 7.____ **Certificate** of public liability insurance.
- 8.____ Scaled floor plan of warehouse premises (8 1/2 x 11) highlighting areas where liquor, wine and heavy beer will be stored.
- 9.____ **\$250** application fee (non-refundable).
- 10.____ **\$750** license fee (refundable if license is not granted). Make checks payable to UDABC.

Enclosed for your information are copies of Utah law and commission rules pertaining to liquor warehouses. If you have any questions concerning these forms or the application process, please contact our Licensing and Compliance Division at (801) 977-6800.

APPLICATION FOR LIQUOR WAREHOUSE LICENSE

1. Applicant/Organization: _____
2. Business Name: _____
3. Location: _____

Street	City	State	Zip
4. Mailing address: _____

Street or P O Box	City	State	Zip
5. Warehouse phone: _____ Other phone: _____ Fax: _____
6. Contact person: _____
7. Owner of real property and building: _____

8. Ownership: Check appropriate box and provide the requested information in the space below.
(add additional sheets if necessary)

- | | | | |
|-----|--|-----------------------------|--|
| [] | Applicant is an individual: | List below information for: | (a) Individual
(b) Managers |
| [] | Applicant is a partnership: | List below information for: | (a) All Partners
(b) Managers |
| [] | Applicant is a corporation: | List below information for: | (a) Any Stockholder owning at least 20% of the corporation
(b) All Corporate officers and Directors
(c) All Managers |
| [] | Applicant is a limited liability company (LLC): | List below information for: | (a) Any members owning at least 20% of the company
(b) All Managers |

TITLE	NAME	HOME ADDRESS
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HOME PHONE#	DR LIC#	SS#	DOB	%OWNED
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Are you a United States Citizen? _____ If no, must attach a copy of residency status.

TITLE	NAME	HOME ADDRESS
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HOME PHONE#	DR LIC#	SS#	DOB	%OWNED
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Are you a United States Citizen? _____ If no, must attach a copy of residency status.

TITLE	NAME	HOME ADDRESS
-------	------	--------------

HOME PHONE#	DR LIC#	SS#	DOB	%OWNED
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Are you a United States Citizen? _____ If no, must attach a copy of residency status.

- 9 Criminal History.** The law prohibits any person who has been convicted of a felony under any federal or state law or any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages from being in the alcoholic beverage business. The law also prohibits any person who has been convicted of any crime involving moral turpitude or, on two or more occasions within the last five years, has been convicted of driving under the influence of alcohol, or any drug, or the combination of alcohol and any drug from being in the alcohol business. This proscription also applies to any officers, partners, managers, managing agents, directors, stockholders who hold at least 20% of the total issued and outstanding stock of an applicant corporation, members who own at least 20% of an applicant limited liability company and to an person employed to act in a supervisory or managerial capacity.

Please list *all* criminal offenses *other than minor traffic offenses* of which you or any of the above persons have ever been convicted:

<u>NAME</u>	<u>CRIMINAL OFFENSE</u>	<u>DATE OF CONVICTION</u>
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In addition, a criminal history background check must be furnished on each person listed above and in subparagraph 6. This may be done as follows:

- a. Utah residents:** If any person listed has been a **resident of Utah for at least two years**, he/she shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the Utah Bureau of Criminal Identification.
- b. Non Residents: Out of state residents or persons who have resided in Utah for less than two years** shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the **Federal Bureau of Investigation (F.B.I.)**.

An informed consent and release of liability form is included with this information.

Fingerprint cards are available at law enforcement agencies. You may download the fingerprint card at this web address: <http://www.fbi.gov/hq/cjisd/pdf/fpcardb.pdf>

Submit the form(s) to the DABC with a processing fee of:

- \$15.00 per card for BCI background checks, or
- \$34.25 per card for FBI background checks.

In the case of an undue delay in the processing of an F.B.I. criminal background check, here are the rules and procedures for obtaining a third-party national background check: An application that requires F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

- 1). the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the F.B.I. criminal history background report(s);
- 2). the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in the application that would disqualify the applicant from applying for and holding the license, permit, or package agency;
- 3). the applicant has submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s) by the F.B.I.
- 4). the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which an F.B.I. background check is required; and
- 5). the applicant stipulates in writing that if an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

A suggested attestation/stipulation letter that satisfies the above requirements is enclosed.

A third-party national criminal background check can be obtained by;

- searching the yellow pages under Background Screening
- searching the internet under Background Screening or Background Checks

Because the DABC is State Agency, we cannot recommend any one background screening service over another.

It is your responsibility however, to obtain the most complete, nationwide, criminal history available for the application process.

10. Applicant agrees to immediately notify the department of any change in ownership, management, and if a corporation, any change in the officers/directors, and understands that failure to do so may result in immediate suspension of license.
11. Have you as an applicant, or proprietor, partner, managing agent, director, officer, stockholder owning at least 20% corporation stock, or if a limited liability company, any member owning at least 20% of the company, had a state alcoholic beverage license, permit, or agency revoked within the last three years?_____ If so, please explain.

12. List any other alcoholic beverage licenses held by applicant/principals:_____

13. List any other warehouse locations:_____

14. List alcoholic products to be stored on premises: _____

15. Geographical area of distribution for heavy beer, liquor and wine: _____

16. By signing below, the applicant attests that:
- a) the applicant is at least 21 years of age.
- b) consent is granted to representatives of the Alcoholic Beverage Control Department, Commission, State Bureau of Investigation (Bureau of Alcoholic Beverage Law Enforcement), and other law enforcement agencies to be admitted immediately and permitted without hindrance or delay to inspect the entire premises and all records of the license holder.
- c) he/she has read and will abide by the provisions of Section 32A, Utah Code and all rules and directives of the Utah Department of Alcoholic Beverage Control; and understands that failure to adhere thereto shall constitute grounds for removal of said license.
- d) the applicant does not and will not discriminate against persons on the basis of race, color, sex, religion, ancestry, or national origin.

e) he/she has read and understands the statements made herein; that execution thereof is done voluntarily and by authorization of said organization, and that any false statement made on this application or any related document is a second degree felony.

- 18.** The undersigned hereby makes application to the Utah Alcoholic Beverage Control Commission for a Liquor Warehouse license and certifies that the information contained herein and attached hereto to be true and correct.

Date: _____

Applicant/owner of business

Authorized signature

Name/title

STATE OF _____

COUNTY OF _____

Subscribed & sworn to before me this _____ day of

_____, _____.

Notary Public

SEAL:

UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

1625 S 900 W • PO Box 30408 • Salt Lake City, UT 84130-0408 • Phone (801) 977-6800 • Fax (801) 977-6889

“LIQUOR WAREHOUSING BOND”

BOND # _____

KNOW ALL PERSONS BY THESE PRESENTS:

That **Principal**, _____, a liquor warehousing licensee, doing business as _____, and **Surety**, _____, a corporation organized and existing under the laws of the state of _____ and authorized to do business in Utah, are held and bound unto the Utah Department of Alcoholic Beverage Control in the sum of **\$10,000**, for which payment will be made, we hereby bind ourselves and our representatives, assigns, and successors firmly by these presents.

Dated this _____ day of _____, _____.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above principal has made application to the Utah Alcoholic Beverage Control Commission for a liquor warehousing licensee pursuant to the provisions of 32A-9, Utah Code.

NOW, THEREFORE, if said principal, its officers, agents and employees shall faithfully comply with the provisions of Title 32A, Utah Code, and the rules and directives of the Utah Alcoholic Beverage Control Commission and the Utah Department of Alcoholic Beverage Control, then this bond shall be void; but, if said principal, its officers, agents and employees fail to comply with the provisions of the laws, rules and directives or orders as the commission or department may issue, then this bond shall be in full force and effect and payable to the Utah Department of Alcoholic Beverage Control. This bond shall run for a continuing term effective _____ unless canceled by service of written notice upon the Utah Department of Alcoholic Beverage Control, which cancellation shall be effective 30 days after receipt of such notice; provided however, that no part of this bond shall be withdrawn or canceled while violations, legal actions or proceedings are pending against said licensee / principal.

Surety

Attorney in fact

{ Corporate Seal }

Principal / Licensee

Authorized signature

Name / Title

STATUTORY AFFIDAVIT FOR CORPORATE SURETY

STATE OF: _____

COUNTY OF: _____

On the _____ day of _____, _____, personally appeared before me, _____, who, being by me duly sworn, did say that he / she is the attorney in fact of _____, **Surety**, and that said instrument was signed in behalf of said surety by authority, and acknowledged to me that he / she as such attorney in fact executed the same.

Notary Public Signature & Seal

Note: *Corporate surety's own affidavit also acceptable*

INFORMED CONSENT AND RELEASE OF LIABILITY

PURPOSE: To determine, in accordance with Utah Code 32A-1-702 and 32A-1-703, if an applicant with the Department of Alcoholic Beverage Control has been:

- convicted of a felony under federal or state law;
- convicted of a violation of a federal law, state law, or local ordinance concerning the sale, manufacture, distribution, warehousing, or transportation of an alcoholic beverage;
- convicted of a crime involving moral turpitude;
- convicted on two or more occasions within the previous five years, driving under the influence of alcohol, a drug, or the combined influence of alcohol and a drug.

RELEASE

I hereby authorize the Department of Alcoholic Beverage Control (DABC) to investigate my criminal history records to ascertain any and all information which may be pertinent to my qualifications as an applicant with the DABC. The release of any and all information is authorized whether it is of record or not, and I do hereby release all persons, firms, agencies, companies, groups or installations, whomsoever, from any damages of or resulting from, furnishing such information to the DABC. I further agree that a copy of this release will remain in my application file.

Name (please print; last, first, middle initial)

Formerly used last names (please print)

Applicant/ doing business as

Signature

Date

(suggested attestation/stipulation letter to the DABC)

Date: _____

To whom it may concern:

I, _____, attest:

- 1. That I have submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s) by the F.B.I.**
- 2. That I am not aware of any criminal conviction that would disqualify me from applying for and holding a Utah Department of Alcoholic Beverage Control license or permit.**

I stipulate that if an F.B.I. report shows a criminal conviction that would disqualify me from holding the license, permit, or package agency, I shall immediately surrender the license, permit, or package agency to the department.

I am enclosing a national criminal history background report from a third party background check reporting service.

Signature

Name/Title

TITLE 32A- ALCOHOLIC BEVERAGE CONTROL ACT

(Updated through May 2008)

Chapter 9 - Liquor Warehousing Licenses

32A-9-101. COMMISSION'S POWER TO ISSUE LICENSES.

(1) The commission may issue liquor warehousing licenses for the warehousing, distribution, and transportation of liquor.

(2) A person may not warehouse, distribute, or transport liquor for resale to wholesale or retail customers unless the person is issued a warehousing license by the commission. A separate license is required for each warehousing facility. Violation of this subsection is a class B misdemeanor.

(3) The commission may prescribe by policy, directive, or rule, consistent with this title, the general operational requirements of licensees relating to:

- (a) physical facilities;
- (b) conditions of storage, distribution, or transport of liquor; and
- (c) other matters considered appropriate by the commission.

32A-9-102. APPLICATION AND RENEWAL REQUIREMENTS.

(1) A person seeking a warehousing license under this chapter shall file a written application with the department, in a form prescribed by the department. The application shall be accompanied by:

- (a) a nonrefundable \$250 application fee;
- (b) an initial license fee of \$750, which is refundable if a license is not granted;
- (c) written consent of the local authority;
- (d) a copy of the applicant's current business license;
- (e) a bond as specified by Section 32A-9-105;
- (f) evidence that the applicant is carrying public liability insurance in an amount and form satisfactory to the department;

(g) a floor plan of the applicant's warehouse, including the area in which the applicant proposes that liquor be stored;

(h) a signed consent form stating that the licensee will permit any authorized representative of the commission, department, or any law enforcement officer unrestricted right to enter the warehouse premises;

(i) in the case of an applicant that is a partnership, corporation, or limited liability company, proper verification evidencing that the person or persons signing the warehousing license application are authorized to so act on behalf of the partnership, corporation, or limited liability company; and

(j) any other documents and evidence the department may require by rule or policy to allow complete evaluation of the application.

(2)(a) All warehousing licenses expire on December 31 of each year.

(b) Persons desiring to renew their license shall submit a renewal fee of \$1,000 and a completed renewal application to the department no later than November 30 of the year the license expires.

(c) Failure to meet the renewal requirements results in an automatic forfeiture of the license effective on the date the existing license expires.

(d) Renewal applications shall be in a form prescribed by the department.

(3) To ensure compliance with Subsection 32A-9-106(9), the commission may suspend or revoke a warehousing license if a warehousing licensee does not immediately notify the department of any change in:

- (a) ownership of the licensee;
- (b) for a corporate owner, the:
 - (i) corporate officers or directors; or
 - (ii) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or
- (c) for a limited liability company:
 - (i) managers; or
 - (ii) members owning at least 20% of the limited liability company.

32A-9-103. Qualifications.

(1) (a) The commission may not grant a warehousing license to any person who has been convicted of:

- (i) a felony under any federal or state law;
- (ii) any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;
- (iii) any crime involving moral turpitude; or
- (iv) on two or more occasions within the five years before the day on which the license is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug.

(b) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1)(a) applies if any of the following has been convicted of any offense described in Subsection (1)(a):

- (i) a partner;
- (ii) a managing agent;
- (iii) a manager;
- (iv) an officer;
- (v) a director;
- (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or
- (vii) a member who owns at least 20% of the applicant limited liability company.

(c) The proscription under Subsection (1)(a) applies if any person employed to act in a supervisory or managerial capacity for the warehouse has been convicted of any offense described in Subsection (1)(a).

(2) The commission may immediately suspend or revoke a warehousing license if after the day on which the warehousing license is granted, a person described in Subsection (1)(a), (b), or (c):

- (a) is found to have been convicted of any offense described in Subsection (1)(a) prior to the license being granted; or
- (b) on or after the day on which the license is granted:
 - (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or
 - (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug; and

(B) was convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A).

(3) The director may take emergency action by immediately suspending the operation of the warehousing license according to the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, for the period during which the criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):

- (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii); or
 - (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug; and
 - (ii) was convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug within five years before the day on which the person is arrested
- on a charge described in Subsection (3)(b)(i).

(4) (a) (i) The commission may not grant a warehousing license to any person who has had any type of license, agency, or permit issued under this title revoked within the last three years.

(ii) The commission may not grant a warehousing license to an applicant that is a partnership, corporation, or limited liability company if any partner, managing agent, manager, officer, director, stockholder who holds at least 20% of the total issued and outstanding stock of an applicant corporation, or member who owns at least 20% of an applicant limited liability company is or was:

(A) a partner or managing agent of any partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;

(B) a managing agent, officer, director, or stockholder who holds or held at least 20% of the total issued and outstanding stock of any corporation that had any type of license, agency, or permit issued under this title

revoked within the last three years; or

(C) a manager or member who owns or owned at least 20% of any limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.

(b) An applicant that is a partnership, corporation, or limited liability company may not be granted a warehousing license if any of the following had any type of license, agency, or permit issued under this title revoked while acting in that person's individual capacity within the last three years:

(i) any partner or managing agent of the applicant partnership;

(ii) any managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(iii) any manager or member who owns at least 20% of the applicant limited liability company.

(c) A person acting in an individual capacity may not be granted a warehousing license if that person was:

(i) a partner or managing agent of a partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;

(ii) a managing agent, officer, director, or stockholder who held at least 20% of the total issued and outstanding stock of a corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or

(iii) any manager or member who owned at least 20% of a limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.

(5) (a) A minor may not be:

(i) granted a warehousing license; or

(ii) employed by a warehouse to handle liquor.

(b) The commission may not grant a warehousing license to an applicant that is a partnership, corporation, or limited liability company if any of the following is a minor:

(i) a partner or managing agent of the applicant partnership;

(ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(iii) a manager or member who owns at least 20% of the applicant limited liability company.

(6) A person, through any officer, director, representative, agent, or employee, or otherwise, either directly or indirectly, may not hold at the same time both a warehousing license and any other kind of license, agency, or permit issued under Title 32A, Chapter 3, 4, 5, 6, or 7, or Chapter 10, Part 2.

(7) If any person to whom a license has been issued under this chapter no longer possesses the qualifications required by this title for obtaining that license, the commission may suspend or revoke that license.

32A-9-104. DUTIES OF COMMISSION AND DEPARTMENT BEFORE ISSUING LICENSES.

(1) Before any warehousing license is issued by the commission, the department shall conduct an investigation for the purpose of gathering information and making recommendations to the commission as to the issuance of the license. The information shall be forwarded to the commission to aid in its determination.

(2) Before issuing any warehousing license, the commission shall:

(a) determine that the applicant has complied with all license qualifications and requirements for making application for a license, as provided by Sections 32A-9-102 and 32A-9-103, and that the application is complete;

(b) consider the applicant's ability to properly utilize the warehousing license within the restrictions of this title and the commission rules including, but not limited to, the types of any products other than liquor that the applicant is presently warehousing, the brands of liquor the applicant intends to warehouse, and the means the applicant intends to use to distribute the liquor;

(c) consider the physical characteristics of the premises where it is proposed that liquor be warehoused, such as location, proximity to transportation, and condition, size, and security of the premises; and

(d) consider any other factors or circumstances it considers necessary.

32A-9-105. BOND.

(1) Each warehousing licensee shall post a cash or corporate surety bond in the penal sum of \$10,000 payable to the department, which the licensee has procured and must maintain for so long as the licensee continues to operate as a warehousing licensee.

(2) The bond shall be in a form approved by the attorney general, conditioned upon the licensee's faithful compliance with this title and the rules of the commission.

(3) If the surety bond is canceled due to the licensee's negligence, a \$300 reinstatement fee may be assessed. No part of any cash or corporate bond so posted may be withdrawn during the period the license is in effect. A bond filed by a licensee may be forfeited if the license is finally revoked.

32A-9-106. OPERATIONAL RESTRICTIONS.

Each person granted a warehousing license and the employees and management of the licensee shall abide by the following conditions and requirements. Failure to comply may result in a suspension or revocation of the license, or other disciplinary action taken against individual employees or management personnel:

(1) All liquor warehoused in this state and sold to out-of-state consignees, shall be transported out of the state only by a motor carrier regulated under Title 72, Chapter 9, Motor Carrier Safety Act.

(2) All liquor warehoused in this state and sold to the department shall be transported by motor carriers approved by the department.

(3) All liquor transported to or from the licensee's premises shall be carried in sealed conveyances that are made available for inspection by the department while en route within the state.

(4) A licensee may not ship, convey, distribute, or remove liquor from any warehouse in less than full case lots.

(5) A licensee may not ship, convey, distribute, or remove any liquor from a warehouse to any consignee outside the state that is not licensed as a liquor wholesaler or retailer by the state in which the consignee is domiciled.

(6) A licensee may not receive, warehouse, ship, distribute, or convey any liquor that the commission has not authorized the licensee to handle through its warehouse.

(7) Each licensee shall maintain accounting and other records and documents as the department may require. Any licensee or person acting for the licensee, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other documents of the licensee required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission or the department, or any of their officials or employees, is subject to the immediate suspension or revocation of the license and possible criminal prosecution under Chapter 12, Criminal Offenses.

(8) A liquor warehousing license may not be transferred from one location to another, without prior written approval of the commission.

(9)(a) A liquor warehousing licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the license to any other person, whether for monetary gain or not.

(b) A liquor warehousing license has no monetary value for the purpose of any type of disposition.

R81. Alcoholic Beverage Control, Administration.**R81-9. Liquor Warehousing License.****R81-9-1. Application.**

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a liquor warehousing license when the requirements of Sections 32A-9-102, 32A-9-103 and -105 have been met, a completed application has been received by the department, and the warehouse premises have been inspected by the department.

R81-9-2. Transportation.

Dual licensees, those who have both a liquor warehousing license and a beer wholesaling license, pursuant to Chapters 9 and 11 of the Act, may transport liquor, wine, and heavy beer to the department and to federal military installations within Utah.

R81-9-3. Records.

Each licensee shall keep available and open for audit at all times during regular business hours, complete and accurate records of shipments to or from their warehouse facility. Records shall be kept for a minimum of three years.

R81-9-4. Audits.

The liquor warehouse licensee shall allow the department, through its authorized representatives, to audit all records of their liquor warehouse license at times the department considers advisable.

R81-9-5. Inspection.

A liquor warehouse licensee shall permit any authorized representative of the commission, department, or any law enforcement officer unrestricted right to enter the liquor warehouse facility to inspect the premises.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: 2002

Notice of Continuation: August 24, 2006

Authorizing, and Implemented or Interpreted Law: 32A-1-107

TITLE 32A - ALCOHOLIC BEVERAGE CONTROL ACT

(Updated through May 2008)

Chapter 13 - Criminal Procedure

32A-13-101. UTAH CODE OF CRIMINAL PROCEDURE APPLICABLE.

Except as otherwise provided in this title, the procedure in all criminal cases arising under this title shall be as prescribed in Title 77, Utah Code of Criminal Procedure, and any other rules adopted by the Utah Supreme Court.

32A-13-102. ARRESTS.

Except as otherwise provided in this chapter, all arrests of persons for any violation of this title shall be made in accordance with Title 77, Chapter 7, Utah Code of Criminal Procedure, and Rules 6 and 7, Utah Rules of Criminal Procedure. All summons in lieu of warrants of arrest shall be in accordance with Rule 6, Utah Rules of Criminal Procedure.

32A-13-103. SEARCHES, SEIZURES, AND FORFEITURES.

(1) The following are subject to forfeiture pursuant to the procedures and substantive protections established in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act:

(a) all alcoholic products possessed, used, offered for sale, sold, given, furnished, supplied, received, purchased, stored, warehoused, manufactured, adulterated, shipped, carried, transported, or distributed in violation of this title or commission rules;

(b) all packages or property used or intended for use as a container for an alcoholic product in violation of this title or commission rules;

(c) all raw materials, products, and equipment used, or intended for use, in manufacturing, processing, adulterating, delivering, importing, or exporting any alcoholic product in violation of this title or commission rules;

(d) all implements, furniture, fixtures, or other personal property used or kept for any violation of this title or commission rules;

(e) all conveyances including aircraft, vehicles, or vessels used or intended for use, to transport or in any manner facilitate the transportation, sale, receipt, possession, or concealment of property described in Subsection (1)(a), (b), (c), or (d); and

(f) all books, records, receipts, ledgers, or other documents used or intended for use in violation of this title or commission rules.

(2) Any of the property subject to forfeiture under this title may be seized by any peace officer of this state or any other person authorized by law upon process issued by any court having jurisdiction over the property in accordance with the procedures provided in Title 77, Chapter 23, Part 2, Search Warrants.

However, seizure without process may be made when:

(a) the seizure is incident to an arrest or search under a search warrant or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this title;

(c) the peace officer or other person authorized by law has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer or other person authorized by law has probable cause to believe that the property is being or has been used, intended to be used, held, or kept in violation of this title or commission rules.

(3) If the property is seized pursuant to a search or administrative warrant, the peace officer or other person authorized by law shall make a proper receipt, return, and inventory and ensure the safekeeping of the property as required by Sections 77-23-206 through 77-23-208. If the magistrate who issued the warrant is a justice court judge, upon the filing of the return the jurisdiction of the justice court shall cease and the magistrate shall certify the record and all files without delay to the district court of the county in which the property was located. From the time of this filing, the district court has jurisdiction of the case.

(4) In the event of seizure of property without process, the peace officer or other person authorized by law shall make a return of his acts without delay directly to the district court of the county in which the property was located, and the district court shall have jurisdiction of the case. The return shall describe all property seized, the place where it was seized, and any persons in apparent possession of the property. The officer or other person shall also promptly deliver a written inventory of anything seized to any person in apparent authority at the premises where the seizure was made, or post it in a conspicuous place at the premises. The inventory shall state the place where the property is being held.

(5) Property taken or detained under this section is not repleviable but is considered in custody of the law enforcement agency making the seizure subject only to the orders of the court or the official having jurisdiction. When property is seized under this title, the appropriate person or agency may:

- (a) place the property under seal;
- (b) remove the property to a place designated by it or the warrant under which it was seized; or
- (c) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(6) When any property is subject to forfeiture under this section, proceedings shall be instituted in accordance with the procedures and substantive protections of Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

(7) When any property is ordered forfeited under Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act, by a finding of the court that no person is entitled to recover the property, the property, if an alcoholic product or a package used as a container for an alcoholic product, shall be disposed of as follows:

(a) If the alcoholic product is unadulterated, pure, and free from crude, unrectified, or impure form of ethylic alcohol, or any other deleterious substance or liquid, and is otherwise in saleable condition, sold in accordance with Section 24-1-16.

(b) If the alcoholic product is impure, adulterated, or otherwise unfit for sale, it and its package or container shall be destroyed by the department under competent supervision.

32A-13-104. PROSECUTIONS.

(1) All prosecutions for violations of this title or commission rules shall be in the name of the state of Utah. A criminal action for violation of any county or municipal ordinance enacted in furtherance of this title shall be in the name of the governmental entity involved.

(2)(a) Prosecution for violation of any provision of this title or commission rule shall be brought by the county attorney of the county or district attorney of the prosecution district where the violation occurs. If any county attorney or district attorney fails to initiate or diligently pursue any prosecution authorized and warranted under this title, the attorney general shall exercise supervisory authority over the county attorney or district attorney to ensure prosecution is initiated and diligently pursued.

(b) If a violation occurs within a city or town, prosecution may be brought by either the county, district, or city attorney, notwithstanding any provision of law limiting the powers of city attorneys.

(c) Local city and town prosecutors also have the responsibility of initiating and diligently pursuing prosecutions for violations of any local ordinances enacted in furtherance of this title or commission rules.

(3) Prosecutions for violations of this title or commission rules shall be commenced by the return of an indictment or the filing of an information with the district court of the county in which the offense occurred or where the premises are located upon which any alcoholic product was seized, if the offense involves an alcoholic product. All other offenses prescribed by this title shall be filed before any court having jurisdiction of the offense committed.

(4) Unless otherwise provided by law, no information may be filed charging the commission of any felony or class A misdemeanor under this title unless authorized by a prosecuting attorney. This restriction does not apply in cases where the magistrate has reasonable cause to believe that the person to be charged may avoid apprehension or escape before approval can be obtained.

(5) In describing an offense respecting the sale, keeping for sale, or other disposal of alcoholic products, or the having, keeping, giving, purchasing, or the consumption of alcoholic products in any information, indictment, summons, judgment, warrant, or proceeding under this title, it is sufficient to state the sale, keeping for sale, or disposal, having, keeping, giving, purchasing, or consumption of the alcoholic product without

stating the name or kind of the alcoholic product or the price of the alcoholic product, or any person to whom it was sold or disposed of, or by whom it was taken or consumed, or from whom it was purchased or received. It is not necessary to state the quantity of alcoholic beverage so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it is sufficient to allege the sale or disposal of more or less than the quantity.

(6) If an offense is committed under a local ordinance enacted to carry out this title, it is sufficient if the charging document refers to the chapter and section of the ordinance under which the offense is committed.

32A-13-105. FINES AND FORFEITURES.

Except where otherwise provided, all fines and forfeitures levied under this title shall be paid to the county treasurer of the county in which the prosecution occurred.

32A-13-106. Nuisances.

(1) (a) Any room, house, building, structure, place, aircraft, vehicle, vessel, or other conveyance, where alcoholic products are possessed, kept, used, offered for sale, sold, given, furnished, supplied, received, purchased, stored, warehoused, manufactured, adulterated, shipped, carried, transported, or distributed in violation of this title and all alcoholic products, packages, equipment, or other property kept or used in maintaining the same, are common nuisances.

(b) Any person who maintains or assists in maintaining any common nuisance is guilty of a class B misdemeanor.

(2) If any person has knowledge, or has reason to believe that the person's room, house, building, structure, place, aircraft, vehicle, vessel, or other conveyance is occupied or used in violation of this title or commission rules as described in this section, or allows it to be so occupied or used, it is subject to a lien for and may be sold to pay all fines and costs assessed against the person guilty of the nuisance. This lien may be enforced by action in any court having jurisdiction.

(3) Any action to abate any nuisance defined in this title shall be brought in the name of the department in any court having jurisdiction. It shall be tried as an action in equity. No bond is required to initiate proceedings.

(4) The court may issue a temporary writ of injunction, if it appears that the nuisance exists, restraining the defendant from conducting or permitting the continuance of the nuisance until the conclusion of the trial. The court may also issue an order restraining the defendant and all other persons from removing or interfering with the alcoholic products, packages, equipment, or other property kept or used in violation of this title or commission rules.

(5) (a) In any action to abate or enjoin any nuisance, the court need not find that the property involved was being unlawfully used at the time of the hearing.

(b) On finding that the material allegations of the petition or complaint are true, the court shall order that no alcoholic product may be possessed, kept, used, offered for sale, sold, given, furnished, supplied, received, purchased, stored, warehoused, manufactured, adulterated, shipped, carried, transported, or distributed in the room, house, building, structure, place, aircraft, vehicle, vessel, or other conveyance or in any part of these.

(c) Upon judgment of the court ordering abatement of the nuisance, the court may order that the premises or conveyance in question may not be occupied or used for any purpose for one year, except under Subsection (5)(d).

(d) The court may permit the premises or conveyance to be occupied or used if its owner, lessee, tenant, or occupant gives bond in an appropriate amount with sufficient surety, approved by the court, payable to the state of Utah, and on the conditions that alcoholic products will not be present in or on the premises or the conveyance, and that payment of all fines, costs, and damages that may be assessed for any violation of this title or commission rules upon the property will be made.

(6) If a tenant of any premises uses the premises or any part of them in maintaining a common nuisance as defined in this section, or knowingly permits use by another, the lease is rendered void and the right to possession reverts to the owner or lessor who is entitled to the remedy provided by law for forcible detention of the premises.

(7) Any person who knowingly permits any building or premises owned or leased by the person, or under the person's control, or any part of any building or premises, to be used in

maintaining a common nuisance as defined in this section, or who, after being notified in writing by a prosecuting officer or any citizen of the unlawful use, and who fails to take all proper measures, either to abate the nuisance or to remove the person or persons from the premises, is guilty of assisting in the maintaining of the nuisance as provided in Section **76-10-804**.

32A-13-107. RIGHT OF APPEAL.

In all cases arising under this title, the commission or the state has the right of appeal as to questions of law.

32A-13-108. DUTIES TO ENFORCE THIS TITLE.

(1) It is the duty of the governor, the commissioners, the director and all officials, inspectors, and employees of the department, all prosecuting officials of the state and its political subdivisions and of counties, cities, and towns, all peace officers, sheriffs, deputy sheriffs, constables, marshals, law enforcement officials, state health officials, and all clerks of the courts to diligently enforce this title in their respective capacities.

(2) Immediately upon conviction of any person for violation of this title or commission rules, or for violation of any local ordinance relating to alcoholic products, it is the duty of the clerk of the court to notify the department of the conviction in writing on forms supplied by the department.

32A-13-109. AUTHORITY TO INSPECT.

(1) For purposes of enforcing this title and commission rules, all members of the commission, authorized representatives of the commission or department, or any law enforcement or peace officer shall be accorded access, ingress, and egress to and from all premises or conveyances used in the manufacture, storage, transportation, service, or sale of any alcoholic product. They also may open any package containing, or supposed to contain, any article manufactured, sold, or exposed for sale, or held in possession with intent to sell in violation of this title or commission rules, and may inspect its contents and take samples of the contents for analysis.

(2) All dealers, clerks, bookkeepers, express agents, railroad and airline officials, common and other carriers, and their employees shall assist, when so requested by any authorized person specified in Subsection (1), in tracing, finding, or discovering the presence of any article prohibited by this title or commission rules to the extent assistance would not infringe upon the person's federal and state constitutional rights.